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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 103/2016*,**

Communication submitted by:	J.I. (represented by counsel, Susan Hindström)
Alleged victims:	The author and her minor son, E.A.
State party:	Finland
Date of communication:	2 May 2016 (initial submission)
References:	Transmitted to the State party on 26 May 2016 (not issued in document form)
Date of adoption of views:	5 March 2018

* Adopted by the Committee at its sixty-ninth session (19 February–9 March 2018).

** The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Domínguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Aruna Devi Narain, Bandana Rana, Patricia Schulz, Wenyan Song, Aicha Vall Verges.

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1.1 The author of the communication is J.I, a Finnish national born in 1972. She submits the communication on behalf of herself and her son, E.A., also a Finnish national, born in 2011. The Convention and the Optional Protocol entered into force for Finland in 1986 and 2000, respectively. The author is represented by counsel, Susan Hindström.

1.2 The communication was accompanied by a request for interim measures to ensure the safety of the author's child, who lives with his father. On 26 May 2016, the Committee requested the State party to take interim measures to ensure a prompt and exhaustive investigation of the author's allegations of violence against E.A. and to take all measures necessary to avoid the occurrence of irreparable harm to the child's health and well-being. On 17 January and 30 May 2017, the request was reiterated to the State party. Interim measures, however, have not been implemented.

Facts as submitted by the author

2.1 The author and J.A. initiated a relationship at the end of 2010. Soon thereafter, J.A. began to act violently towards the author. The violence included attempted suffocation, a bloody nose, being dragged by the hair, being thrown against a door and around the apartment and being humiliated. She later became pregnant. J.A. tried to force her to have an abortion but she refused. During the pregnancy, in 2011, she was subjected to pushing, slapping, name-calling, humiliation and threats. She remained in the relationship at that time as she wanted her child to have his father present in his life. Their son, E.A., was born on 14 August 2011.

2.2 After the birth, the violence escalated. The author did not inform the authorities because J.A. had threatened to kill her if she told anyone. On 22 December 2011, J.A. assaulted the author at their home, hitting her in the face, leaving a bruise around one eye and a wound on her cheek. She visited a doctor the following day. There was pain in her cheek for one to two weeks and a 1 cm scar is still visible near her eye.

2.3 In the service plan drawn up by the child welfare authorities in the wake of the assault, dated 18 January 2012, it is stated that there was a physical altercation between the parents at the end of 2011. J.A. stated that he became nervous whenever the author came too close to him and yelled, and admitted that he had hit the author. The author told the authorities that J.A. had hit her on the side and, during another disagreement, in the face. An outside party had noticed that the relationship between the parents was belligerent and was concerned about the author's situation.

2.4 Between 15 and 29 February 2012, J.A. struck the author under her left ribs. She heard a cracking sound and her left side became sore immediately. Owing to the pain, which lasted for a month, she could not lift her baby and it was difficult to move. J.A. attacked her a second time later in the same month.

2.5 On 22 February 2012, the Turku city authorities decided to make financial provision for J.A. to attend meetings of a group for violent men. He did not attend. In March 2012, J.A. attempted to have the author involuntarily committed to a mental institution. According to the author's medical record of 19 March 2012, the admitting doctor concluded that she was not psychotic, had had no previous mental illness and was potentially harmful neither to herself nor to anyone else, and that therefore the criteria for committal had not been met.

2.6 On the night of 15 April 2012, J.A. attacked the author, hitting her with a 30-cm-long drill bit that caused a wound on the back of her head. The author panicked and fled in her car, stopped 1.5 km away and called an ambulance. The ambulance took her to hospital, where the wound was stitched. As a result, on 16 April 2012, J.A. was detained by the police and their 8-month-old child was placed in the custody of the child welfare authorities, as his mother was still in hospital. The child remained

in their custody until 15 May 2012, despite the author's discharge from hospital on 17 April. That decision by the Turku city family and social services department was based on concerns about "the ability of the parents to provide for the safety and age-appropriate care of the child against the background of their continual disagreements". According to the child welfare report made by the paramedic on 16 April 2012, "the mother had been taken by ambulance to emergency care, since the father had hit her on her head with an iron pipe". J.A. later admitted, in testimony given on 14 October 2013 in the Varsinais-Suomi District Court during a subsequent custody dispute, that he had struck the author with a drill bit on the date in question.

2.7 On 16 October 2012, the author, upon the recommendation of a social worker and given the continual domestic violence and disagreements, left the family home with the child and moved to a women's shelter in Turku. The quarrels continued and the child was placed in an orphanage on 7 November 2012. As a result, the author became upset, as she felt that the shelter and child welfare authorities, rather than trying to help her and her child, had again separated them, as they had done on 16 April 2012, when she had been taken to hospital for emergency care owing to the violent behaviour of J.A.

2.8 At the beginning of December 2012, the author separated from J.A. permanently and moved to Mellilä to protect herself and her child from any further violence. By a decision dated 5 December 2012, E.A. was returned to live with his mother and J.A. was granted visitation rights. In line with the decision, a social worker had requested an assessment of the author by the acute psychiatry unit, but no such assessment was carried out with regard to J.A. According to the resulting medical report, the author was willing to discuss her situation. At no point was any concern raised about her psychiatric well-being or its possible effects on her child. It is further stated therein that both parents were capable of taking care of the child. Because the author had primarily looked after the child prior to his placement in the orphanage and was on childcare leave, her son had been returned to her care. There was no mention in the social worker's assessment of the continual violence by the father towards the author in the child's presence, nor was any question raised about his stability, although there were serious grounds for assessing him as violent and as a threat to the author and their child.

2.9 At the end of 2012, J.A. filed an application for sole custody of their son. On 28 January 2013, the Varsinais-Suomi District Court handed down an interim order, based on the agreement of the parents, that the son should live with his mother and that his father should have visitation rights of two weekends per month.

2.10 On 14 May 2012, both parties requested a report from social services because the father's visitation rights had not been carried out successfully. The report was obtained by the Varsinais-Suomi District Court on 11 September 2013 and sent to the parties. On 14 October 2013, the District Court granted the father sole custody of the child. In its reasoning for the decision, the Court referred briefly to violence between the parents but focused on the hostile attitude of the author towards J.A. and how that might affect their child in the future. Regarding the violence, the Court stated that both parties had accused each other of, and admitted using, violence, that there was no suggestion that any violence would be directed at E.A., although he had been present during violent episodes, and that no violence had occurred since the separation. Mention is made in the Court's decision of documentation confirming that the author had been shown not to have any mental illness but it is stated that her behaviour indicated instability, which had been corroborated by witnesses.

2.11 On 16 October 2013, the prosecutor filed an indictment against J.A. concerning three separate suspected violent assaults against the author in 2011 and 2012. On 30 October 2013, the child was removed from the author's home in Mellilä by two

social workers, two bailiffs and two police officers. That was very shocking for the author and her child.

2.12 On 19 February 2014, the Varsinais-Suomi District Court convicted J.A. of carrying out a violent assault on the author on 22 December 2011 in Turku by hitting her in the face, causing bruising around one eye and leaving a wound on her cheek.[1] J.A. was sentenced to pay a fine of €240 and to pay the author damages of €200 for the pain inflicted and €800 for cosmetic harm. J.A. has to date not paid the author the €1,000. The District Court dismissed charges relating to assaults on the author allegedly carried out between 15 and 29 February and on 15-16 April 2012. The Court ruled in those cases that no conclusions about what had happened could be drawn, given discrepancies in the accounts given of them by J.A. and the author and appearing in the medical records of the author, which the prosecutor had presented in court. J.A. had admitted striking the author with a drill bit on 15 April 2012 during custody hearings on 14 October 2013, but he denied it during the criminal proceedings. Thus, the author asserts, he should also have been convicted of that crime.

2.13 On 11 June 2014, the Turku Court of Appeal upheld the decision of the Varsinais-Suomi District Court granting sole custody of E.A. to J.A. The violence of J.A. and his general unsuitability to look after E.A. were raised in the appeal. The Court held that nothing changed the decision of the lower court. On 10 November 2014, the Supreme Court denied the author leave to appeal. No reasoning was given.

2.14 While E.A. has lived with J.A., he has repeatedly told the author that his father hurts him and has shaken him. He also constantly asks her permission to live with her again. She and the child welfare authorities have filed criminal reports with the police about suspected assaults by J.A. against E.A. in 2015 and 2016, but investigations have been slow and ineffective. Given that J.A. has been convicted of assault against the author and is violent, the situation is unbearable to the child and his safety and well-being are in serious danger. Furthermore, the child is not in day care, where his well-being could be monitored.

2.15 In July 2015, in connection with visitation, J.A. assaulted the author. She reported the assault to the police, but was told that no action would be taken. As a result, she dropped the charges. The author claims, therefore, that she is not protected effectively by the authorities from further violence.

Complaint

3.1 The author submits that the failure of the State party to prevent domestic violence affects women more than men, in violation of article 1 of the Convention. She claims that the State party does not consider domestic violence to be a real and serious threat. Its legislation and the practice of its public institutions, including the judicial system, do not recognize gender-based violence and its consequences. For example, the Act on Child Custody and Right of Access (No. 361/1983), according to the provisions of which the custody decision was taken, contains no special protective measures for mothers or children who are victims of domestic violence, even though the majority of victims of such violence are women and their children, while the perpetrators are generally men. The Act is not applied in practice in such a manner as to protect the victims of domestic violence effectively, as can be seen in the present case.

3.2 The author argues that the State party did not act with due diligence for the effective protection of her and her child against violence and its consequences. The State party has failed to adopt adequate legislative and policy measures to guarantee

[1] Case number R13/4430.

the rights of the author and her child and protect them against the risk of further violence by the perpetrator, as the violent father was granted sole custody of the child, who continues to live with the perpetrator. The author further submits that the decision by the courts to discontinue her custody of her child violates her human rights and discriminates against her severely as a woman and as a victim of domestic violence, given that J.A. had, on several occasions and in the presence of the child, used violence against her and was later also convicted of one of those assaults by a court in criminal proceedings. She asserts that she and her son are victims of gender-based discrimination, because the State party has failed to protect her equal rights in marriage and during its dissolution and as a parent with regard to her son's best interests (custody, residence and visitation rights). Those acts and omissions of the State party violate articles 1, 2 (a), (c), (d) and (f), 15 (1) and 16 (1) (d), (e) and (f) of the Convention.

3.3 The author further claims that the law and the practice of the authorities do not recognize many forms of violence against women, resulting in inequality with men and a lack of protection of motherhood, and that there is no effective support for victims of domestic violence in the State party. Victims often do not seek protection from the authorities, in part because of the stigma that may attach to them and the generally negative reaction of society. Often, when they do seek protection, the authorities do not offer adequate protection. The author also feared such a stigma and was ashamed of the assaults. When she finally sought help because of the violence, she was not protected, even though the violence had been known to the authorities for a long period, at least since the end of 2011. Instead, the violence was repeatedly deemed by the child welfare authorities to be a disagreement between (equal) partners. In addition to the consequences that the continual severe violence has had for the author's well-being (including her nervousness and hyperarousal), the authorities have also called her state of mental health into question. Although various doctors stated in 2012 and 2013 that she had no mental illness and that her state of mental health was normal, the accusations of J.A. regarding her "instability" have been at least partly believed by the authorities and the courts.

State party's observations on admissibility

4.1 On 26 July 2016, the State party requested the Committee to consider the admissibility separately from the merits of the communication. That request was not acceded to.

4.2 The State party submits that, after initial proceedings were dismissed in the Supreme Court, the author brought new proceedings on 13 May 2015 before the Varsinais-Suomi District Court requesting joint custody and residence or, alternatively, the extension of her visitation rights. On 9 June 2016, the District Court granted an extension to her visitation rights and rejected all other requests. On 8 July 2016, the author appealed to the Court of Appeal. Those proceedings are still pending and, at the time of the communication, had been in process for just over two years, which cannot be considered unreasonably prolonged. Furthermore, the allegations in the communication of gender-based violence were not raised before the national authorities.

4.3 The State party suggests that the author does not have standing to submit the communication on behalf of her son, who is in the custody of J.A., who in turn does not have knowledge of the proceedings before the Committee. It submits that the author has not provided sufficient reasoning, as required under article 2 of the Optional Protocol and rule 68 of the Committee's rules of procedure.

4.4 As to the material allegations, the State party asserts that they have been proved to be unfounded and that, therefore, the complaint should be found inadmissible

ratione materiae. It states that, according to available information, 51 child welfare notifications relating to E.A. have been filed, of which 29 by the author, 3 by the father and the rest by the authorities. It states, furthermore, that the authorities have reacted properly to all notifications, protecting the child's safety and well-being in various ways. It emphasizes that, according to the District Court judgment of 9 June 2016, the content and tone of the allegations in notifications by the author demonstrate her intention to change the substance of the earlier decision. The court noted that the majority of notifications by the author had been proved to be unfounded.

4.5 It further states that the substance of the present complaint is merely to challenge the legitimate assessment of the national courts regarding the custody of the child. The author therefore seeks to use the Committee as a fourth instance.

4.6 In relation to the emergency protection order issued for the author's child on 16 April 2014, the State party notes that the author did not lodge an appeal against it with the administrative authorities, which is provided for under the Child Welfare Act (No. 417/2007) and the Administrative Judicial Procedure Act (No. 586/1996).

4.7 The State party asserts that the best interests of E.A. have been taken into consideration at every stage of the proceedings in accordance with national legislation.[2] In that regard, it refers to the fact that equality between men and women is guaranteed under the Act on Equality between Women and Men (No. 609/1986), which was an essential part of the legislative framework fulfilling requirements under the Convention, and which has been further developed by relevant European Union legislation and the Criminal Code. The judgments of the national courts in the author's case make clear that they considered the acts of violence by the author and her partner when considering custody, residence and visitation rights.

4.8 The State party adds that legislation is being developed continually in order to ensure the effective protection of children, as reaffirmed in the Social Welfare Act (No. 1301/2014) and the new government action plan for gender equality covering the period 2016–2019, which was adopted in May 2016 and contains some 30 measures, including on violence against women and intimate partner violence as a priority area. The State party further notes that it ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which entered into force on 1 August 2015. The State party has sought to ensure, through legislation and other measures, the practical realization of the policy on the best interests of the child. That principle remains paramount.

4.9 The State party maintains that the author's allegations regarding the lack of national legislation in place to protect her and her child are manifestly unfounded under article 4 (2) (c) of the Optional Protocol. It therefore asserts that, based on the foregoing, there has been no breach of article 1, 2 (a), (c), (d) and (f), 15 (1) or 16 (1) (d) and (f) of the Convention.

State party's observations on the merits

5.1 On 28 November 2016, the State party submitted its comments on the merits of the communication.

5.2 Reiterating its comments on admissibility and challenging all allegations made by the author, even where no specific observations have been submitted, the State party asserts specifically that, on 7 September 2016, leave to appeal to the Court of Appeal was granted and that the appeal is pending.

[2] The Act on Child Custody and Right of Access and the Child Welfare Act.

5.3 The State party refers to existing legislative provisions on equality in chapter 2 (6) of the Constitution and sections 1 and 4 of the Act on Equality between Men and Women, which include detailed provisions on the elimination of discrimination, the protection of fundamental rights and the positive obligation to promote equality systematically.

5.4 In specific reference to the author's allegations regarding discrimination, including the failure of the State party to protect her and her son from domestic violence, the lack of due diligence and timely investigations, the failure to adopt sufficient legislative measures and police procedures, the failure to recognize in law, and protect against, violence against women, the failure to provide training for law enforcement officials, the failure to prioritize the health of victims, and their de facto penalization, the State party asserts that they are vague, general in nature and unsubstantiated and do not relate to the specific circumstances of the author's case. The State party further asserts that the author has failed to demonstrate how her rights have been violated in accordance with article 2 of the Optional Protocol.

5.5 The State party submits that the author's complaint is based on her disagreement with the conclusion reached by the national authorities in her case and that she is merely using the Committee as a fourth instance to reassess the facts and evidence in her case.

5.6 As to the author's allegation regarding the failure of the police to investigate her complaints, the State party affirms that the author filed three criminal complaints against J.A. — on 3 March, 20 July and 18 November 2015 — and notes that, on 23 August 2016, the police ordered that he should be brought in for questioning.

5.7 Regarding the emergency protection order issued for the child on 16 April 2012, the State party submits that an emergency care worker notified the child welfare authorities that day of the situation and that the child was placed in emergency care as it was deemed that his safety had been greatly endangered owing to violence between his parents. The authorities informed the author of the decision at 10.30 p.m. on 16 April 2012 and, during that conversation, she threatened to kill J.A. On 2 May 2012, the placement was concluded as the grounds on which it had been ordered no longer obtained. The State party avers that the placement was made in the best interests of the child and was concluded as soon as circumstances allowed. Moreover, the author did not appeal against the decision of 16 April 2012.

5.8 In relation to the author's allegations regarding the lack of access to a women's shelter, the State party asserts that, according to the information available to it, she and her child were in fact taken in to a shelter upon her request. It avers that the policy of providing safe houses to those in need is taken seriously and has been in place and developed continually since the 1970s. It further notes that special programmes aimed at reducing violence against women have been in place since the mid-1990s, the most recent of them being an action plan to reduce violence against women, covering the period 2010–2015, which is aimed at extending a multidisciplinary risk assessment system to various municipalities. It also affirms that the Act on State Compensation to Producers of Shelter Services (No. 1354/2014), which entered into force on 1 January 2015, made the financing of shelters a State rather than local responsibility. The Act also provides for qualitative assessment of personnel and services, which include psychosocial support, counselling and guidance. All services are free of charge and available across regions and to men, women and children according to their needs.

5.9 With regard to the author's claims about her son's lack of access to day-care services since 30 October 2013, the State party notes that, pursuant to section 4 of the Act on Child Custody and Right of Access, the person who has custody of a child has the right to decide on the child's care, upbringing, place of residence and other

personal matters. The State party asserts that, according to information available to it, the author's child has been attending day care since 1 June 2016.

Author's comments on the State party's observations on admissibility and the merits

6.1 On 4 January 2017, the author provided her comments on the State party's submissions. She disagrees with the statement that she has not exhausted domestic remedies. The State party confirms that the first custody dispute ended on 10 November 2014, when the Supreme Court denied her leave to appeal and the decision of the Court of Appeal became final. Thus, she has exhausted all the remedies available at the national level to obtain protection for herself and her child in the custody dispute. The requirement for admissibility is not that she has tried to exhaust the national proceedings several times, since it is clear that the discriminatory and stereotyped attitudes of the national courts do not change by challenging the case again before the same court or courts. In addition, she has exhausted the remedies available to her in criminal law, under which J.A. was convicted of assaulting her on 19 February 2014. J.A. was sentenced to pay a fine of €240 and to pay her damages of €200 for the pain inflicted and €800 for cosmetic harm. That judgment, although final, did not offer any protection to her or her son, and J.A. has not paid her the compensation ordered.

6.2 The author repeats that she and her son, as victims of domestic violence, were discriminated against in the first custody dispute. She confirms that she initiated the second hearing in order to obtain protection for the child and that it is pending before the Court of Appeal. Aware of her child's continuous distress, she asserts that she is, as a parent, obliged by the law to try to obtain protection for him, regardless of the previous inaction and failure of the authorities to provide it. However, those latest proceedings are not the subject of the present communication.

6.3 The author disagrees with the assertion that she did not bring the matters in question before the national courts. She has informed them of the repeated and severe violence inflicted on her by J.A. in the presence of their child. In the proceedings before the Court of Appeal, the conviction on 19 February 2014 of J.A. for assaulting her was presented as written evidence in the custody dispute. It has been said that repeated violence targeting the other parent in the presence of the child proves that the offending parent is not suitable to act as a guardian of the child.

6.4 The author asserts that she has also stated before the national courts that the decisions in 2012 to place E.A. in emergency care, owing to the domestic violence inflicted on her by J.A., have to be taken into account as evidence of his poor parenting skills and detrimental behaviour when assessing the best interests of the child. His assaults of the author when they were still cohabiting have already severely affected E.A. given that, owing to his father's actions, E.A. was placed in emergency substitute care and separated from his parents at the early age of 8 months and again at the age of 15 months for several weeks. This underlines that J.A.'s actions are and have been severely detrimental to the child. In addition, she asserts, the child was returned from each emergency placement to her and not the father, which is evidence that J.A. is not a reliable parent who could provide a safe environment for the stable development of a child. Therefore, she should have custody of the child and J.A. should be granted visitation rights. Moreover, she asserts that she has always taken good care of E.A., as J.A. has admitted in court proceedings. She maintains that these facts and evidence have not, however, been taken into account in the decisions of the courts in a non-discriminatory way.

6.5 Noting the assertion by the State party that, according to the judgment of 9 June 2016 by the Varsinais-Suomi District Court, the contents and overtone of the

allegations in the child welfare notifications and emails of the author demonstrate her intention to change the substance of the (earlier) court decision, the author states that the same District Court, in its previous judgment, discriminated heavily against her and her son as victims of domestic violence and did not take the domestic violence inflicted by J.A. on her into account at all. The Court is prejudiced against her and it is clear that the courts are prone to defending their own earlier decisions. What the Court states about her motivation for initiating a second custody hearing is a matter of opinion, not fact. She initiated the proceedings and filed 29 child welfare reports in order to obtain protection for her son. Since the Court has previously taken a stand that custody of the child should be removed from the mother and that proven domestic violence is not a matter of concern, it is clear that such a court is of the view that the parent raising the matter of domestic violence against the child is the problem, rather than the violence itself.

6.6 With regard to the assertion attributed by the State party to the District Court that both she and the child's father have admitted having used violence against each other, the author maintains that she has neither used nor admitted to having used violence against J.A. Moreover, she has never been suspected of any such acts and J.A. has not presented any evidence in court with regard to alleged violence on her part. She recalls that, as a suspect in a criminal investigation, J.A. had no obligation to tell the truth in court or in the course of the criminal investigation and it would clearly have been in his interest to allege that she was also violent. J.A., however, has never reported any such acts by her to the police or presented any evidence in that regard. She states that the unproven allegations of J.A., repeated by the State party, are defamatory and that an allegation without evidence is not sufficient to prove that the violence was carried out by both parents.

6.7 The author states that the courts have not taken into account that the case includes a pattern of domestic violence that has had serious consequences for the victims: the mother and the son. The domestic violence occurred on several occasions over a long period, leading to the emergency placement of the child in substitute care twice in 2012, the hospitalization of the author on 16 April 2012 after a serious assault and the conviction of J.A. for assault in 2014. Most of the incidents of violence, however, went unpunished. The author refers to the incident in which she received a blow to the head from J.A. using a drill bit, after which their son was taken into care.

6.8 The author thus avers that the pattern of domestic violence was not taken duly into account when the decision on the custody, residence and visitation rights concerning E.A. was taken, and that the authorities did not investigate and remedy all the acts of violence effectively. As stated by the State party, she has filed 29 child welfare reports about her son. The State party also affirms that other parties, persons and authorities filed a total of 19 child welfare reports about him up until July 2016. The number of reports is a cause for great concern and proves that she is not the only party worried about the child's safety and well-being. The reports have not been investigated in detail and the police investigation was terminated without the child or witnesses having been heard or any physical or psychological examination of the child. This matter has been neglected by the State party, despite the request for interim measures issued by the Committee on 26 May 2016. This has led to a situation in which the child has reported being a victim of a severe assault by J.A. between 5 and 15 December 2016. The assault was reported by the mother and a psychiatric nurse of Loimaa City Health Care Centre to the child welfare authorities. No investigation was carried out. E.A. reports that further incidents of violence took place on 9 and 22 April 2017, in which he was grabbed by the neck and his hair was pulled. No investigation was carried out, despite expressions of concern by a doctor and the submission of child welfare criminal reports. E.A. remains without protection,

even despite the Committee's request for interim measures. The local authorities have denied any knowledge of that request.

6.9 The author states that she has filed the communication also on behalf of her son in order to obtain protection for him. She herself is currently safe in her own home, since she was able to separate from J.A. and thereby largely put an end to the assaults against her. According to the jurisprudence of human rights bodies, a natural mother has standing to represent her child, since the complaint is made for the purpose of its protection. In a case in which the parent with sole custody of the child has been convicted by a court of an assault on the other parent, that is, in the present case, the author, it is clear that it is in the best interests of the child that the non-violent parent, who has been deprived of custody, should be allowed to represent her child in an international investigation. The position of the State party in this matter, strongly opposing the rights of a natural mother who is a victim of domestic violence and trying to protect her son, clearly reflects the traditional attitudes in Finland that discriminate heavily against women, and whereby domestic violence is not recognized as a problem and the rights of domestic violence victims are not protected.

6.10 The author disagrees with the statement that she wishes to use the communications procedure as a fourth instance. She is resorting to the communications procedure available to her because she and her son have been discriminated against as victims of domestic violence before the national courts and by the authorities. They have not been protected effectively in national civil or criminal proceedings, as is required by national law and the Convention. The State party has ratified the Convention and its Optional Protocol and the provisions of the Convention should be applied in all domestic violence cases in the State party, whether civil or criminal. The Committee should examine the case because it is apparent that the decisions of the courts are arbitrary and amount to a denial of justice.

6.11 The author further asserts that, in its general recommendation No. 19 (1992) on violence against women, the Committee defines gender-based violence as a form of discrimination, within the meaning of article 1 of the Convention. States parties have a due diligence obligation to take all appropriate measures to prevent and investigate cases of gender-based violence perpetrated by non-State actors, punish the perpetrators and provide reparations to victims and survivors. According to the Committee, public officials must respect that obligation if women are to enjoy substantive equality and protection against violence in practice. That obligation includes investigating the existence of failures, negligence or omissions on the part of public authorities that may have deprived victims of protection against such violence.

6.12 In *González Carreño v. Spain*, the Committee affirmed that child custody and visitation decisions should be based on the best interests of the child, not on stereotypes, with domestic violence being a relevant consideration, and stressed that stereotypes affected the right of women to an impartial judicial process and that the judiciary should not apply inflexible standards based on preconceived notions about what constituted domestic violence.[3] In that case, the Committee concluded that the decision to grant the father unsupervised visits was based on stereotypes about domestic violence that minimized his abusive behaviour and prioritized his (male) interests over the safety of the mother and child, did not take into account the long-term pattern of domestic violence and did not specify necessary safeguards. Similarly, in the present case, the courts did not take into account the long-term pattern of domestic violence and did not specify necessary safeguards for the protection of the child after his parents' separation. This led to a situation in which E.A. has for three years, since October 2013, reported that his father hurts him. The latest more severe

[3] CEDAW/C/58/D/47/2012, para. 9.7.

assault of E.A. by J.A., as reported by E.A. to his mother, occurred between 5 and 15 December 2016. The State party has ignored even the request for interim measures made by the Committee on 26 May 2016 for the protection of E.A. No action has been taken to protect the child and the police ended their investigation without examining or hearing the child or witnesses.

6.13 The author highlights that, when there is evidence of systematic patterns of violence against women, or when the incidence of violence against women is inordinately high, as reflected in the high rate of domestic violence in Finland, it is clear that the State knows or should know of the risks faced by women who have complained of violence from their partners or former partners. Consequently, it is unacceptable for the State party to argue that the risk faced by the author or her son is small or that the case is manifestly ill-founded, given that J.A. has been convicted of assaulting the author. She maintains that it is not enough for the State to adopt legislation in order to discharge its duty of due diligence; the legislation must be applied. In Finland, State negligence in protecting women and minors from domestic violence persists, despite the adoption of legislative measures. The law is also deficient with regard to protecting minors who live in violent settings and who are therefore also victims of violence.

6.14 The author notes that, in *González Carreño v. Spain*, the Committee recalled "that in matters of child custody and visiting rights, the best interests of the child must be a central concern and that when national authorities adopt decisions in that regard they must take into account the existence of a context of domestic violence".[4] It further considered that "the authorities of the State party initially took actions to protect the child in a context of domestic violence. However, the decision to allow unsupervised visits was taken without the necessary safeguards and without taking into account that the pattern of domestic violence that had characterized family relations for years, unquestioned by the State party, was still present".[5] In the present case, the national courts did not even consider the possible need for supervised visits for J.A. Rather, they granted him sole custody of the child and excluded the mother, the victim of domestic violence, from custody. The courts should be ex officio responsible for assessing the need for supervised visits in domestic violence cases, since it might be unsafe for the victim to request them herself. Such a demand from the victim's side at trial could also jeopardize her health, or even life, by provoking the perpetrator into using violence again.

6.15 The Committee has recalled that, under article 2 (a) of the Convention, States parties have the obligation to ensure, through law or other appropriate means, the practical realization of the principle of equality of men and women, and that, under articles 2 (f) and 5 (a), States parties have the obligation to take all appropriate measures to modify or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women. States parties also have the obligation, in accordance with article 16 (1), to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relationships. In that regard, the Committee stresses that stereotyping affects the right of women to a fair trial and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence.[6]

6.16 The author concedes that the State party has taken some general measures to deal with domestic violence, including legislation and awareness-raising. The education of public, judicial and social services officials, however, has been

[4] Ibid., para. 9.4.

[5] Ibid., para. 9.5.

[6] See *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), para. 9.11.

insufficient and they remain unaware of the concept of domestic violence, its effects on the power structures of a family or its consequences for the victims. Those officials are equally unaware of the international human rights conventions that the State party has ratified. Rather, they continue to apply harmful traditional attitudes reflecting male dominance and de facto approval of domestic violence by men. In order for a woman who is a victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will expressed in legislation must be supported by all State actors, who adhere to the State party's due diligence obligations.[7] The State party states in its response that J.A. claimed that both parents had used violence against each other. The evidence in the custody case and criminal trial, however, proves the contrary. The author is not even suspected of any assault targeted at J.A., whereas he has been convicted of assaulting her. Thus, the clear evidence presented by the author of one-sided domestic violence inflicted by J.A. on her in the presence of their child, E.A., was been ignored by the courts in the case concerning the custody, residence and visitation rights regarding their child. Her significant evidence has thus been accorded less respect and weight than that of J.A., which constitutes discrimination against her under article 15 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

7.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's argument that the author has not exhausted domestic remedies, as it claims that the appeal against the decision of 9 June 2016 remains pending, that she did not raise allegations of gender-based violence before the national authorities and that she did not challenge the emergency protection order regarding her child. The Committee notes that custody of the author's child was granted to his father on 14 October 2013, that the author challenged that decision on 11 June 2014 before the Turku Court of Appeal, which upheld the decision, and that she was then denied leave to appeal before the Supreme Court on 10 November 2014. The author has submitted that, for the purposes of that first set of proceedings, the outcome of which she challenges before the Committee, she has brought the substantive matter, including domestic violence, before the national authorities up to the highest judicial instance. The author also informed the Committee by letter on 23 November 2017 that the second set of proceedings regarding the decision of 9 June 2016 had been discontinued owing to legal advice received by her about the futility of continuing to challenge the same issues previously dealt with before the same courts, having regard to inherent defects in the Court's approach to custody proceedings.

7.4 The Committee observes that the author has been consistently challenging the legal custody of her child for more than four years. Having regard to concerns about the first set of proceedings, including the upholding of the custody decision after J.A.'s conviction for a violent assault against the author, without any assessment of his suitability for assuming sole custody; the failure of the police to investigate or begin proceedings when new incidents of violence were reported after the separation;

[7] See *Goecke v. Austria* (CEDAW/C/39/D/5/2005), para. 12.1.2.

the fact that the second set of proceedings was launched after the communication was brought before the Committee; the fact that those proceedings were based on the same matters as in the first custody dispute; and the fact that the author had taken all matters that are before the Committee, including domestic violence, up to the Supreme Court and had felt it necessary to bring a second set of identical proceedings only in order to protect her son from harm in the face of the repeated failure of the State party to comply with the Committee's reiterated requests for interim measures, the Committee considers that the issues raised in the communication have been exhausted at the national level and therefore does not consider itself precluded by the requirements of article 4 (1) of the Optional Protocol from considering the merits. The Committee does not deem it necessary to consider whether there has been exhaustion as to the second set of proceedings.

7.5 The Committee notes the other arguments of the State party to the effect that the author does not have standing to make a claim on behalf of her child and failed to explain her reasons for making such a claim, that she is asking the Committee to act as a fourth instance and reassess facts and evidence in the case and that her claims are inadmissible ratione materiae, as most of them have been disproved. It also notes the author's position that, as his mother, she has the right to make a claim for the protection of her child, especially given that it is made in connection with violence by J.A. against herself and the child and that her claims have been vindicated by the conviction of J.A. for assault, and that she is asking the Committee to examine the case on the basis that the national authorities discriminated against her and denied her justice. The Committee finds that the author's claims are sufficiently substantiated for the purposes of admissibility and that they are within the competence of the Committee to decide, that she does have standing to act on behalf of her child where his safety is concerned and that she is requesting a review of the national processes on the basis of a denial of justice and discrimination based on sex rather than merely challenging the factual conclusion drawn by national decision makers. It therefore does not consider itself to be precluded from considering the matter on any other grounds of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information placed at its disposal by the author and the State party, in accordance with the provisions of article 9 (1) of the Optional Protocol.

8.2 The question before the Committee is whether the State party fulfilled its duty of due diligence in connection with the protection of the author from, and investigation of, incidents of domestic violence by J.A. The Committee's task is to review, in the light of the Convention, decisions taken by the national authorities within their purview and to determine whether, in making those decisions, they took into account the obligations arising from the Convention. In the present case, the decisive factor is, therefore, whether those authorities applied principles of due diligence and took reasonable steps to ensure, without discrimination based on sex, the protection of the author and her son from possible risks in a situation of continuing domestic violence.

8.3 The Committee notes the State party's argument that it has robust and comprehensive legislation in place regarding the equality of men and women and the best interests of the child and that this was at the forefront of the decisions taken concerning the custody and visitation rights with regard to E.A. It also notes the State party's assertion that the author's claims are of a general nature. It further notes the author's concession that such legislation exists but that, de facto, national decision makers and law enforcement officials do not implement it properly, in that they allow gender stereotypes to affect the weight given to the evidence of victims and vulnerable

persons, often women and children, versus that of the perpetrator, and that the State party's authorities failed to protect her and her son owing to gender stereotypes in decision-making that minimized the importance of the father's violence. The Committee finds that the author's remarks on national laws and practice have been linked to her personal case.

8.4 The Committee notes with concern that the request for interim measures that it made, and reiterated, was never passed on to the local authorities and that no action was taken to protect E.A. from alleged violence by his father. The Committee recalls that interim measures, as provided for under article 5 of the Optional Protocol and rule 63 of its rules of procedure, are essential to its work on individual communications submitted under the Optional Protocol. Flouting of the rule, especially by measures such as, in the present case, failing to protect women and children at risk of serious harm, undermines the protection of Convention rights through the Optional Protocol.

8.5 The Committee observes that the Varsinais-Suomi District Court questioned the mental state of a victim of domestic violence and her hostility towards her alleged abuser without questioning the mental stability or carrying out an assessment of an accused abuser before giving him the sole custody of a child. It notes that, almost immediately after the custody decision, the prosecutor brought charges against J.A. for violent assault but that, two weeks later, E.A. was handed over to his father without further checks being carried out. The Committee also notes that the mother was subjected to a psychiatric assessment in relation to custody and visitation rights, which showed no cause for concern, but that the father was never subjected to such an assessment, despite his criminal conviction. It also notes that the final custody decision of 14 October 2013 contains very little or no reasoning for the change in custody from the mother to the father, that no reasoning in either the Court of Appeal decision or the decision on the application for leave to appeal to the Supreme Court explains why the violence was not given prominence in the decision-making process, even after the conviction of J.A. for violent assault against the author in the interim, that reports to the police were not investigated and that, in spite of the number of child welfare reports and the father's conviction, no investigation or assessment of his parental abilities has been carried out. The Committee is also persuaded that there has been a violation of the obligation of due diligence, as it took more than a year for J.A. to be brought in for questioning with respect to complaints of criminal conduct.[8]

8.6 In this regard, the Committee refers to paragraphs 26 and 27 of its general recommendation No. 33 (2015) on women's access to justice, where it is stated that:

> Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the re-victimization of complainants.

Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims

[8] See paragraph 6.5 above.

of the victim/survivor and simultaneously supporting the defence advanced by the alleged perpetrator. Stereotyping can, therefore, permeate both the investigation and trial phases and shape the final judgment.

8.7 The Committee is of the view that the expression "paramount" in article 16 (1) (d) and (f) of the Convention means that the child's best interests may not be considered to be on the same level as all other considerations. The Committee is also of the view that, in order to demonstrate that the right of the child to have one's best interests assessed and taken as a primary or paramount consideration has been respected, any decision concerning a child must be reasoned, justified and explained. The Committee notes that the failure of the State party to respect its obligation of due diligence in the treatment of the claims of the author by the police and the various courts has led to the best interests of E.A. being harmed and to an infringement of his right to have his mother benefit from equal treatment regarding custody issues, in line with article 16 of the Convention.

8.8 The Committee recalls its general recommendations No. 19 and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, according to which gender-based violence that impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions is discrimination within the meaning of article 1 of the Convention. Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of the human rights of women and children to life and physical, sexual and psychological integrity, and guided by the principle of the best interests of the child.[9] The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, prosecute and punish perpetrators and provide reparations to victims and survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.[10]

8.9 The Committee recalls that: under article 2 (a) of the Convention, States parties have the obligation to ensure, through law and other appropriate means, the practical realization of the principle of equality of men and women; under article 2 (e), they can be held responsible for the acts of private persons, organizations or enterprises if they fail in their due diligence obligation; and under articles 2 (f) and 5 (a), they have the obligation to take all appropriate measures to modify or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women. States parties also have the obligation, under article 16 (1), to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relationships. In that regard, the Committee stresses that stereotypes affect the right of women to impartial judicial processes and that the judiciary should not apply inflexible standards based on preconceived notions about what constitutes domestic violence. In the present case, the Committee considers that the authorities, in deciding on the custody of E.A., applied stereotyped and therefore

[9] See *Yildirim v. Austria* (CEDAW/C/39/D/6/2005); *Goekce v. Austria* (CEDAW/C/39/D/5/2005); *González Carreño v. Spain* (CEDAW/C/58/D/47/2012); *M.W. v. Denmark* (CEDAW/C/63/D/46/2012) and *Jallow v. Bulgaria* (CEDAW/C/52/D/32/2011).

[10] See the Committee's general recommendation No. 35, para. 24 (2) (b).

discriminatory notions in a context of domestic violence by treating what appears to be a repetitive pattern of unilateral violence by J.A. as a disagreement between parents, affirming that both parents committed violence despite no evidence to support this apart from a statement made by the author the day after she had suffered a serious assault, dismissing the importance of J.A.'s criminal conviction, and according custody to a violent man. They have thus failed to provide due supervision in accordance with their obligations under articles 2 (a), (c), (d), (e) and (f), 15 (a) and 16 (1) (d) and (f) of the Convention.

8.10 The Committee notes with appreciation that the State party has adopted a broad model for dealing with domestic violence that includes legislation, awareness-raising, education and capacity-building. It recalls, however, concerns raised in its concluding observations on the State party's periodic report to the Committee in 2014, specifically regarding violence against women.[11] It observes that, in order for a woman who is a victim of domestic violence to see the practical realization of the principle of non-discrimination and substantive equality and enjoy her human rights and fundamental freedoms, the political will expressed by that model must have the support of public officials who respect the obligations of due diligence by the State party. They include the obligation to investigate the existence of failures, negligence or omissions on the part of public authorities that may have caused victims to be deprived of protection. The Committee considers that, in the present case, that obligation was not discharged with regard to complaints made by the author about J.A., her treatment in the courts and the Committee's request for interim measures.

9. In accordance with article 7 (3) of the Optional Protocol and taking into account the foregoing considerations, the Committee considers that the State party has infringed the rights of the author and her son under articles 2 (a), (c), (d) and (f), 15 (a) and 16 (1) (d) and (f) of the Convention, read jointly with article 1 of the Convention and the Committee's general recommendation No. 35.

10. The Committee makes the following recommendations to the State party:

(a) With regard to the author and her son:

(i) Promptly reopen judicial proceedings concerning the custody of E.A. and, within that framework, conduct a detailed assessment of J.A.'s violence in order to determine the best interests of the child, and accord her legal aid to proceed;

(ii) Grant the author appropriate reparation, including comprehensive compensation commensurate with the seriousness of the infringement of her rights;

(iii) Ensure payment to the author of sums due as part of the criminal judgment against J.A. dated 19 February 2014;

(b) In general:

(i) Adopt measures to ensure that domestic violence is given due consideration in child custody decisions;

(ii) Conduct an exhaustive and impartial investigation to determine whether there were structural failures in the State party's system and practices that may cause victims of domestic violence to be deprived of protection;

(iii) Strengthen the application of the legal framework to ensure that the competent authorities may respond with due diligence to situations of domestic violence;

[11] See CEDAW/C/FIN/CO/7, para. 18.

(iv) Provide mandatory training for judges and administrative personnel on the application of the legal framework with regard to combating domestic violence, including training on the definition of domestic violence and on gender stereotypes, as well as training with regard to the Convention, its Optional Protocol and the Committee's jurisprudence and general recommendations, in particular general recommendations Nos. 19, 28, 33 and 35. With regard to awareness-raising and capacity-building, in particular:

a. Address the issue of the credibility and weight given to women's voices, arguments and testimony, as parties and witnesses;

b. Address the standards used by judges and prosecutors in assessing what they consider to be appropriate behaviour for women;

(v) Develop and implement an effective institutional mechanism to coordinate, monitor and assess measures to prevent and address violence against women;[12] and implement monitoring mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice.

11. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

[12] See CEDAW/C/FIN/CO/7, para. 18 (b).